

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

South Carolina Electric & Gas Company,

Civil Action No. 3:18-cv-01795-JMC

Plaintiff,

v.

Comer H. Randall, in his official capacity as Chairman of the South Carolina Public Service Commission; Swain E. Whitfield, in his official capacity as Commissioner of the South Carolina Public Service Commission; John E. Howard, in his official capacity as Commissioner of the South Carolina Public Service Commission; Elliott F. Elam, Jr., in his official capacity as Commissioner of the South Carolina Public Service Commission; G. O’Neal Hamilton, in his official capacity as Commissioner of the South Carolina Public Service Commission; and Thomas J. Ervin, in his official capacity as Commissioner of the South Carolina Public Service Commission.

Defendants.

SCE&G’S EXPEDITED MOTION FOR AN INJUNCTION PENDING APPEAL

Plaintiff South Carolina Electric & Gas Company (“SCE&G”) hereby moves the Court on an expedited basis for an injunction pending appeal, requesting expedited consideration of this motion, and would show the following:

1. SCE&G filed its original Verified Complaint against the members of the South Carolina Public Service Commission on June 29, 2018, asserting that Act 287 and Resolution 285 (together, the “Act”) constituted a taking of private property without just compensation, violated the Bill of Attainder Clause, and deprived SCE&G of its substantive and procedural due process rights. Dkt. 1. SCE&G then moved for preliminary injunctive relief, arguing that

SCE&G would be irreparably harmed if the PSC implemented the Act and the confiscatory rates imposed by the Act took effect on or about August 7, 2018. Dkt. 5.

2. Defendants opposed the motion for preliminary injunctive relief and filed a motion to dismiss arguing that the Complaint failed to state a claim for relief. Dkts. 31, 48.

3. On July 18, 2018, the Court granted intervenors' motions to intervene. Dkt. 41. The intervenors also filed motions to dismiss, arguing that the Court lacked jurisdiction and/or should abstain from deciding this case, Dkts. 50, 52, and opposed the motion for preliminary injunctive relief, Dkts. 59, 61.

4. On July 26, 2018, the Court partially granted the motions to dismiss. Dkt. 67. The Court determined that it had jurisdiction to hear this case and declined to apply any abstention doctrine. However, the Court dismissed the Complaint for failure to allege specific acts by Defendants. The Court permitted SCE&G to re-plead its Complaint.

5. SCE&G filed a Verified Amended Complaint on July 27, 2018. Dkt. 68. Defendants and intervenors again moved to dismiss the Amended Complaint. Dkts. 76-78.

6. The Court held a preliminary injunction hearing on July 30 and 31, 2018. Dkts. 92, 95.

7. On August 2, 2018, the Court denied the re-filed motions to dismiss of defendants and intervenors. Dkt. 97.

8. On August 6, 2018, the Court denied SCE&G's motion for preliminary injunctive relief. Dkt. 101. The Court concluded that SCE&G's taking claim was not yet ripe because the final rate has not yet been set by the Public Service Commission. *Id.* ¶ 61. The Court also concluded that SCE&G had not shown that it has a property right in revised rates under the BLRA once construction ceases on a plant. *Id.* ¶ 78. The Court did not address SCE&G's

argument that the retroactive re-definition of “prudence” by the Act deprived SCE&G of its due process rights.

9. SCE&G intends to seek immediate appellate review of the Court’s order denying its requested injunction pursuant to 28 U.S.C. § 1292(a)(1).

10. SCE&G is aware that the Court has already determined that it is not entitled to an injunction in this matter. Nonetheless, for the same reasons stated in its earlier motion for a preliminary injunction (Dkt. 5), SCE&G maintains that it is entitled to an injunction pending appeal and files this motion to perfect its appellate rights pursuant to Fed. R. App. P. 8(a)(1) and 28 U.S.C. § 1292(a)(1).

11. Pursuant to D.S.C.L.R. 7.02, SCE&G has conferred with defendants and intervenors, and they oppose this motion.

12. SCE&G requests expedited review and consideration of this motion, because such consideration is in the interests of justice given the substantial showing of irreparable harm that SCE&G has made and the imminent imposition of rates that SCE&G contends are confiscatory.

WHEREFORE, SCE&G requests that the Court (1) grant SCE&G preliminary injunctive relief pending appeal and (2) expedite its consideration of this motion in order to speed immediate appellate review.

Respectfully submitted this 6th day of August, 2018.

s/ Steven J. Pugh

Steven J. Pugh (Fed. ID No. 7033)

Benjamin P. Carlton (Fed. ID No. 11797)

RICHARDSON PLOWDEN & ROBINSON, P.A.

1900 Barnwell Street (29201)

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

spugh@richardsonplowden.com

bcarlton@richardsonplowden.co

and

I.S. Leevy Johnson (Fed. ID No. 2194)
George Craig Johnson (Fed. ID No. 6538)
JOHNSON, TOAL & BATTISTE, P.A.
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700
islj@jtbpap.com
George@jtbpap.com

and

David L. Balser (*pro hac vice*)
Ashley C. Parrish (*pro hac vice*)
Jonathan R. Chally (*pro hac vice*)
Brandon R. Keel (*pro hac vice*)
Julia C. Barrett (*pro hac vice*)
KING & SPALDING, LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
(404) 572-4600
dbalser@kslaw.com
aparrish@kslaw.com
jchally@kslaw.com
bkeel@kslaw.com
jbarrett@kslaw.com

ATTORNEYS FOR SOUTH CAROLINA
ELECTRIC & GAS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2018, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing and make available the same to all attorneys of record.

s/ Steven J. Pugh

Steven J. Pugh (Fed. ID No. 7033)
Richardson Plowden & Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400
spugh@richardsonplowden.com